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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 Consumer Financial Protection
22 Bureau,

23 Plaintiff,

24 v.

25 Dmitry Fomichev,

26 Defendant.
27

Case No. 2:16-cv-2724-PSG(Ex)

AMENDED COMPLAINT FOR
VIOLATIONS OF THE CONSUMER
FINANCIAL PROTECTION ACT OF
2010

Introduction

The Consumer Financial Protection Bureau (Bureau) brings this action against Dmitry Fomichev (Defendant or Fomichev) under the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5536(a)(3), 5564, 5565. Fomichev co-founded D and D Marketing, Inc., d/b/a T3Leads (T3), a lead aggregator that sells consumer-loan applications as “leads” to small-dollar lenders and other purchasers. T3 failed to vet or monitor its lead generators and lead purchasers, exposing consumers to the risk of having their information purchased by actors who would use it for illegal purposes. T3 allowed its lead generators to attract consumers with misleading statements, and T3 took unreasonable advantage of consumers’ lack of understanding of the material risks, costs, or conditions of the loan products for which they apply. T3’s conduct was unfair and abusive, in violation of the CFPA, 12 U.S.C. §§ 5531, 5536(a)(1). Fomichev knowingly or recklessly provided substantial assistance to T3 in its unfair and abusive acts and practices, in violation of the CFPA, 12 U.S.C. § 5536(a)(3).

Jurisdiction and Venue

1. This Court has subject-matter jurisdiction over this action because it is brought under “Federal consumer financial law,” 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345.

Factual Background

6. D and D Marketing, Inc., d/b/a T3Leads, is a California S-Corporation with its principal place of business at 4000 West Alameda Avenue, Suite 200, Burbank, California, 91436. T3 is in the business of receiving consumer-loan applications from lead generators and selling the applications as leads to small-dollar lenders.

7. Fomichev co-founded T3 in 2005 and claims to own 50% of the company.

8. Fomichev served as Chief Executive Officer and Chief Technical Officer of T3, and he was responsible for designing the proprietary software and systems used to transact T3's business.

9. Fomichev had substantial control over and involvement in the establishment of T3's business policies and practices.

10. Lead generators operate websites that advertise loans and through which consumers submit loan applications. Lead generators transfer the applications to T3.

11. T3 hosts and controls certain lead-generator websites from which it receives loan applications, acting as its own lead generator in these instances.

12. T3 sells the loan applications it receives from lead generators and its own websites to purchasers in its network.

1 13. The purchasers in T3's network include online small-dollar lenders, as
2 well as data managers, data brokers, and remarketing companies.

3
4 14. Lenders to which T3 sells loan applications extend credit in the form
5 of small-dollar loans for use by consumers for personal, family, or household
6 purposes, with an expectation that the principal, interest, and fees will be collected
7 from consumers.
8

9 15. Data managers are intermediaries for lenders that outsource their lead-
10 purchasing activities, and data brokers are lead aggregators that have their own
11 networks of purchasers to which they sell loan applications after they purchase
12 them from T3. T3 does not require that data managers and data brokers disclose the
13 end purchasers of applications.
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16 16. Remarketing companies buy consumer information to market
17 products other than the loans for which consumers applied. T3 does not require its
18 purchasers to provide information to T3 or to consumers about remarketing
19 relationships they may have.
20

21 17. From the founding of T3 through at least July 2014, Fomichev had
22 authority and responsibility to decide whether to accept any lead generator or
23 purchaser into or remove them from T3's network.
24

25 18. To filter and sell applications to purchasers, T3 uses a "ping tree,"
26 which sets the order in which purchasers have the opportunity to purchase a given
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1 application from T3. The position of each purchaser in the ping tree is determined
2 primarily by the price the purchaser is willing to pay T3 for that application; the
3 higher the price, the better the purchaser's position in the ping tree.
4

5 19. From the founding of T3 through at least July 2014, Fomichev shared
6 responsibility for deciding the position of each purchaser in the ping tree and
7 designing T3's systems to filter and sell applications in the manner most profitable
8 to T3, without regard for the practices of lead generators or purchasers.
9

10 20. A consumer who submits a loan application on a lead generator's
11 webpage is immediately redirected from that page to a lender's webpage. This
12 automated process takes just seconds, and the consumer is not informed that the
13 loan application has been filtered through T3 or sold by T3.
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16 21. T3 knows or has reason to believe that its lead generators' websites
17 contain misleading or inaccurate statements. Nevertheless, T3 does not effectively
18 monitor lead generators' websites to check for misleading or inaccurate statements.
19

20 22. In addition to the websites of its lead generators, the lead-generating
21 websites owned and operated by T3 have contained misleading or inaccurate
22 statements.
23

24 23. T3 regularly receives applications from its own websites or the
25 websites of its lead generators that contain misleading or inaccurate statements that
26 are likely to mislead consumers into believing that lenders to which they will be
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1 directed have been evaluated and meet certain standards. For example, lead-
2 generating websites include statements such as, “[t]he owners of this site and our
3 lenders comply with all state and federal regulations to short-term loans,” or
4 “Federal law (Lending Reform Act) protects you against usurious interests. We
5 provide you with lenders who follow the rules. Their rates are reasonable.”
6
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8 24. T3 regularly accepts applications from its own websites or the
9 websites of its lead generators that contain misleading or inaccurate statements that
10 are likely to mislead consumers into believing that their application is being
11 submitted directly to a lender by, for example, using a name that appears to be a
12 lender, such as “BrightonLenders.com,” or language suggesting the website is that
13 of a lender, such as “Cash Now is the premier provider of online payday loans to
14 US residents,” or “www.800fastpayday.com supplies payday loans to borrowers so
15 they can conveniently access the cash they need without the hassle and stress
16 imposed by other lenders.”
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20 25. T3 regularly accepts applications from its own websites or the
21 websites of its lead generators that contain misleading or inaccurate statements that
22 have falsely suggested that the lead generator would help consumers find the best
23 rates or lowest fees or that it would review consumers’ applications to match them
24 with the most appropriate lenders. For example, lead-generating websites include
25 statements such as, “you can be sure that you are getting the best rates available;”
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1 “we work to find you the best possible loan terms;” or “[o]ur system accounts for
2 every aspect of your stated need and personal details when seeking the right fit.
3
4 This helps you get the amount you need with the best possible APR and repayment
5 terms.”

6 26. Lead generators forward applications to T3 without regard for how the
7
8 consumers’ information will be used.

9 27. T3 does not require its purchasers to provide T3 with the precise loan
10 terms that each consumer will be offered, and T3 makes no attempt to match
11
12 consumers with the best loan for their needs, as consumers are led to believe by
13 some of T3’s or its lead generators’ websites. T3 sells to purchasers based on its
14
15 own financial interests, without regard for representations that have been made to
16 and expectations of consumers.

17 28. T3 knows in advance of its sales the application parameters each of its
18
19 purchasers will accept, and T3 knows the identity of each purchaser in its network.
20 T3 does not vet or monitor the purchasers in its network for compliance with
21 applicable laws.

22 29. T3 knows or has reason to believe that the applications it sells are
23
24 likely to result in loans with interest rates that exceed state usury limits or
25
26 otherwise fail to comply with laws of the state where the consumer is located.
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1 30. T3 knows the consumer's state of residence for each application it
2 sells, and T3 knows or should know that some of the applications it sells are from
3 consumers located in states where the resulting loan will be void or the lender will
4 have no legal right to collect the principal, interest, or fees from the consumer.
5

6 31. T3 receives applications from consumers in all U.S. states and sells
7 applications from consumers in any state for which a purchaser requests them. T3
8 does not require proof that the lenders that receive its applications are permitted to
9 make loans to consumers in each state from which they seek applications.
10

11 32. T3 does not require data managers or data brokers to disclose the
12 ultimate purchasers of T3's applications. T3 therefore does not know the identity
13 of all lenders that purchase consumer applications through its lead-purchaser
14 network.
15

16 33. Many of the lenders that purchase applications through T3 are entities
17 organized by Native American Indian tribes, known as tribal lenders, or under the
18 laws of foreign jurisdictions, known as offshore lenders. T3 knows or should know
19 that many of its purchasers are tribal or offshore lenders, and T3 sells applications
20 to those lenders knowing that consumers are not informed that their application
21 may be directed to one of them.
22

23 34. Tribal and offshore lenders typically claim immunity from state
24 regulation, do not comply with the laws of the states where the consumers to which
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1 they make loans are located, and do not concede that they are subject to
2 jurisdiction in a forum convenient to the consumer.
3

4 35. Tribal and offshore lenders typically charge higher interest rates than
5 do lenders adhering to state laws. These lenders rely on lead generators to find
6 customers. They are willing to pay competitive prices for applications and
7 regularly rank at the top of the T3 ping tree.
8

9 36. Many of the tribal lenders among T3's purchasers offer contracts
10 providing for the application of tribal law to the contract and providing an
11 exclusive tribal dispute-resolution process.
12

13 37. T3 has sold hundreds of thousands of loan applications to tribal or
14 offshore lenders.
15

16 38. T3 knew or should have known that certain entities operating or
17 purporting to operate in the small-dollar-loan industry have engaged in a variety of
18 scams or fraudulent schemes involving applications purchased from lead
19 aggregators, such as contacting consumers to collect non-existent debt. T3
20 encountered so much illicit activity that one employee referred to "the notorious
21 scams we deal with on a daily basis" in an internal e-mail message. T3 knew or
22 should have known of the risk of purchasers using its applications for illegal
23 purposes.
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1 39. In 2013, T3 developed a “Lender Audit Questionnaire” and requested
2 information regarding whether its purchasers complied with the laws of the states
3 where they made loans. Many of its purchasers failed to respond to this request or
4 admitted a failure to comply with state laws, but T3 continued to do business with
5 them. T3’s Lender Audit Questionnaire asked purchasers to identify ongoing
6 investigations of their activities, but it did not request information about existing
7 orders that may restrict the lending activity of purchasers.
8

9
10 40. Purchasers provide regular feedback to T3 regarding the quality of the
11 purchased applications, including the number of applications that result in loans
12 and reasons why applications did not result in loans. T3 uses this information to
13 evaluate its lead generators and refine its processing to optimize the rate at which
14 applications result in loans. This optimization is conducted for T3’s benefit—to
15 sell more applications.
16

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18 41. T3 does not share the identities of its lead generators with its
19 purchasers, and T3 does not share the identities of its purchasers with its lead
20 generators.
21

22 42. T3 controls the information flow between its lead generators and its
23 purchasers, allowing lead generators to claim ignorance of the terms of the loans
24 offered to consumers and allowing purchasers to claim ignorance of the methods
25 used to attract consumers.
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1 46. T3 provides a material service to covered persons in connection with
2 the offering or provision by the covered persons of a consumer-financial product or
3 service. T3 is a “service provider” to covered persons under the CFPA. 12 U.S.C.
4 § 5481(26)(A).
5

6 47. An act or practice is unfair if it causes or is likely to cause substantial
7 injury to consumers that is not reasonably avoidable by consumers and is not
8 outweighed by countervailing benefits to consumers or to competition. 12 U.S.C.
9 § 5531(c)(1).
10

11 48. T3 and its lead generators make statements to consumers regarding
12 the lenders that will receive the consumers’ information and the loans those lenders
13 will offer.
14

15 49. T3 knows or should know of the lead generators’ statements and that
16 they are often false and misleading.
17

18 50. T3 does not vet or monitor its purchasers for illegal activity.
19

20 51. T3 does not require data managers or data brokers to disclose the end
21 purchasers of applications.
22

23 52. Consumers are not notified that T3 is involved with processing their
24 loan applications and cannot reasonably investigate or assess the reliability of the
25 lenders to which their applications are ultimately sold.
26

27 53. T3’s conduct is likely to cause substantial injury to consumers.
28

1 61. An act or practice is abusive if it “takes unreasonable advantage of . . .
2 a lack of understanding on the part of the consumer of the material risks, costs, or
3 conditions of the product or service.” 12 U.S.C. § 5531(d)(2)(A).
4

5 62. Contrary to representations by T3 and its lead generators, consumers
6 are likely to be steered, through T3’s ping tree, to lenders offering less-favorable
7 terms than may otherwise be available to them. In particular, consumers are likely
8 to be steered to lenders that charge higher interest rates than lenders that comply
9 with state laws, that do not adhere to state usury limits, or that claim immunity
10 from state regulation and jurisdiction. Consumers also are likely to be steered to
11 lenders that offer contracts providing for the application of tribal law to the
12 contract and providing an exclusive tribal or foreign dispute-resolution process.
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16 63. The possibility of being matched by T3 with a lender that offers less-
17 favorable terms than may otherwise be available is not disclosed to consumers by
18 lead generators or T3. Only after consumers are filtered through the T3 ping tree
19 and redirected from a lead generator’s page to a lender’s e-signature page can
20 consumers find the offered terms and links to lengthy disclosures where lenders
21 reveal material terms such as their tribal affiliation, claimed immunity, and
22 mandatory dispute-resolution policies.
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24

25 64. The inaccurate statements by T3 and its lead generators decrease the
26 likelihood that consumers will read the lengthy disclosures on a lender’s webpage.
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1 65. The cost of a loan relative to what other lenders might offer, the law
2 governing a loan contract, including whether the lender complies with laws of the
3 consumer's state, and the available forum for raising disputes with the lender or in
4 which the consumer might be sued by the lender are material risks, costs, or
5 conditions of a loan product.
6

7
8 66. T3 knows or should know of lead generators' representations to
9 consumers. T3 knows or should know that its process results in many, if not most,
10 applications being steered to lenders that make loans to consumers that do not
11 comport with express or implied representations made on lead-generator websites.
12

13 67. T3's conduct takes advantage of consumers' lack of understanding of
14 the material risks, costs, or conditions of the products for which they apply and
15 constitutes an abusive act or practice under 12 U.S.C. §§ 5531(d)(2)(A),
16 5536(a)(1)(B).
17

18 68. Fomichev had significant responsibility for establishing T3's policies
19 and practices, and, throughout his employment at T3, he had substantial control
20 over T3's operations.
21

22 69. Fomichev knowingly or recklessly provided substantial assistance to
23 T3, a service provider engaged in unfair acts and practices, in violation of the
24 CFPA, 12 U.S.C. § 5536(a)(3).
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Prayer for Relief

Wherefore, the Plaintiff requests that the Court:

1. award injunctive relief as may be necessary to prevent consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

2. permanently enjoin Defendant from committing future violations of the CFPA or any provision of “Federal consumer financial law,” as defined by 12 U.S.C. § 5481(14);

3. grant additional injunctive relief as may be just and proper;

4. award damages or other monetary relief against Defendant;

5. order Defendant to pay redress to harmed consumers;

6. order disgorgement of ill-gotten revenues from Defendant;

7. impose civil money penalties against Defendant;

8. order Defendant to pay Plaintiff’s costs and fees incurred in connection with prosecuting this action; and

9. award additional relief as the Court may determine to be just and proper.

Dated: June 29, 2016

Respectfully submitted,

/s/ Kara K. Miller

Kara K. Miller

(VA Bar #47821, admitted *pro hac vice*)